

9 FAM 42.32(D)(2) PROCEDURAL NOTES

*(CT:VISA-697; 02-09-2005)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.32(D)(2) PN1 ACQUIRING EMPLOYMENT-BASED FOURTH PREFERENCE STATUS

(TL:VISA-54; 02-28-1992)

An alien who wishes to immigrate under INA 203(b)(4) must file a petition to accord such a classification with a consular officer, but only after having been notified that he or she has been granted status as a special immigrant.

9 FAM 42.32(D)(2) PN2 ACQUIRING SPECIAL IMMIGRANT STATUS

9 FAM 42.32(d)(2) PN2.1 Principal Officer's Recommendation

(CT:VISA-697; 02-09-2005)

a. The principal officer shall recommend that the employee or retired employee be granted special immigrant status under exceptional circumstances based on:

- (1) Official records to establish the period of time served with the U.S. Government;
- (2) Documented evidence of "exceptional circumstances" (see 9 FAM 42.32(d)(2) *N6.5*); and
- (3) Assessment of the overall picture of the employee's performance as illustrated in the personnel file by such items as evaluation reports, reprimands, awards, etc.

b. In the case of an alien described in section 152 of the Immigration Act of 1990, there must also be a showing that the alien or a family member is subject to a clear threat due to employment with the U.S. Government or under a U.S. Government official. Posts must,

however, submit **all** such cases to CA/VO/L/A for an advisory opinion **before** undertaking ordinary processing.

9 FAM 42.32(d)(2) PN2.2 Form of Submission

(CT:VISA-697; 02-09-2005)

The post shall submit the recommendation and evidence to support the recommendation to CA/VO/L/A by cable captioned "VISAS: ADVISORY OPINIONS": *Classification* and/or Foreign State Chargeability. The principal officer must sign the recommendation and it must include:

- (1) The name and date and place of birth of the principal alien and any immediate family accompanying or *following to join*;
- (2) The length of time the alien has been in the employ abroad of the U.S. Government and the agency or agencies concerned, with appropriate employment dates and places;
- (3) The present employment status of the alien and, if not employed, the reasons and circumstances surrounding the alien's departure from the last U.S. Government position;
- (4) In the case of an alien qualifying for status under section 152 of the Immigration Act of 1990, evidence of a clear threat due to U.S. Government employment;
- (5) The principal officer's recommendation. (See 9 FAM 42.32(d)(2) *N2.1* for particulars.)

9 FAM 42.32(D)(2) PN3 ESTABLISHING PRE-SCREENING PANELS

(TL:VISA-54; 02-28-1992)

Various posts have instituted interagency pre-screening panels to consider cases of employees desiring special immigrant status under INA 101(a)(27)(D). These panels pre-screen cases prior to submission to the principal officer for a decision whether to recommend to the Department that special immigrant status be authorized. The Department endorses this approach for posts that find them useful, particularly large posts where various U.S. Government agencies employ foreign nationals.

9 FAM 42.32(d)(2) PN3.1 Functions of Pre-Screening Panels

(TL:VISA-54; 02-28-1992)

Participation by representatives of various agencies in the deliberations of the pre-screening panels ensures that their views are given weight. An advantage for posts using pre-screening panels is the uniformity of approach that is afforded by panel assessment of the statutorily required "exceptional circumstances" dimension in cases of all employees seeking immigrant status under INA 101(a)(27)(D). A pre-screening panel's preliminary determination that such circumstances exist in an employee's case, along with the panel's verification that the other requirements discussed in the preceding interpretive note material also have been met, can be of great assistance to a principal officer in deciding whether to recommend that the employee be granted special immigrant status. While the principal officer retains ultimate authority to make recommendations to the Department for special immigrant status and therefore cannot be bound by the decision of a pre-screening panel, these recommendations would normally carry great weight. This ensures that employees of all agencies are treated equally.

9 FAM 42.32(d)(2) PN3.2 Notation of Review by Pre-Screening Panels

(TL:VISA-3; 08-30-1987)

Any post wishing to institute a pre-screening panel system may do so without prior Departmental approval. However, a post seeking Departmental authorization of special immigrant status for an employee whose case has been reviewed by a pre-screening panel should so indicate in its recommendation and should specify whether the pre-screening panel recommended for or against submission.

9 FAM 42.32(D)(2) PN4 ESTABLISHING PRIORITY DATE

(TL:VISA-206; 05-22-2000)

The priority date of a petition filed by a special immigrant government employee shall be the date Form DS-1884, Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, is properly filed with the consular officer abroad.

9 FAM 42.32(D)(2) PN5 DELEGATED AUTHORITY TO APPROVE PETITIONS

(CT:VISA-697; 02-09-2005)

a. Authority to approve petitions for INA 203(b)(4) classification on behalf of the Secretary of State has been delegated to consular officers *under* 22 CFR 42.32(d)(2)(vii)). The bases for approval are that the alien has:

- (1) Been accorded status as a special immigrant under INA 101(a)(27)(D) prior to filing the petition; and
- (2) Filed the petition within one year of acquiring such status.

b. If all of the above factors are present, the consular officer has no basis for denial of the petition and may not do so. If any of those factors is not present (e.g., the petition was not filed in a timely fashion), the consular officer must submit an advisory opinion request to CA/VO/L/A. (See 9 FAM 42.32(d)(2) N9.2 regarding extensions of validity.)

9 FAM 42.32(D)(2) PN6 CA/VO/L/A FUNCTION IN PROVIDING GUIDANCE ON SECTION 101(A)(27)(D) ISSUES

(TL:VISA-54; 02-28-1992)

Any inquiry of a general nature regarding special immigrant classification should be directed to CA/VO/L/A as a request for an advisory opinion.

9 FAM 42.32(D)(2) PN7 CA/VO/L/A FUNCTION IN DETERMINING ELIGIBILITY UNDER SECTION 101(A)(27)(D)

(TL:VISA-54; 02-28-1992)

The Advisory Opinions Division of the Department of State (CA/VO/L/A) acts on behalf of the Secretary of State in approving the principal officer's recommendation that an alien be granted status as a special immigrant and determining that it is in the national interest to grant such status.